vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5615 OF 1997

Shri Tatyaba Nivrutti More ... Petitioner

V/s.

Miss Rajashri Bapusaheb Chougule & Ors. ... Respondents

Mr.N.V. Bandiwadekar for Petitioner
Mr.Sunil Dighe for Respondent No.1
Ms.S.C. Prabhu for Respondent Nos.2 and 3
Mr.A.P. Vanarse, AGP, for Respondent Nos.4 and 5

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **SEPTEMBER 10, 2007**

ORAL JUDGMENT:

. The petition challenges the order of the School Tribunal dated 18.9.1997. By this order, the School Tribunal had dismissed the appeal filed by Respondent No.1 and held that she was entitled to reinstatement with continuity of service and full backwages excluding the pay and allowances payable to her for the period from 16.7.1993 to 30.7.1994 as she was employed in another institute during this time. The petitioner has challenged this order as it has affected his rights as an assistant teacher.

2. Respondent No.3 appointed Respondent No.1 as an assistant teacher on a temporary basis from 19.6.1991 to 30.4.1993. Her services were determined by efflux of time. On 30.10.1991, the Education Officer granted

approval to the appointment of Respondent No.1 for one year. On the expiry of one year, the services of Respondent No.1 ceased on 30.4.1992. An order was issued by Respondent No.3 appointing Respondent No.1 again on a temporary basis from 20.6.1992 to 30.4.1993. Her services were terminated after issuing notice on 30.4.1993. The petitioner was appointed to the post of assistant teacher on 30.6.1994. After the services of Respondent No.1 came to an end with Respondent No.3, she was appointed on 16.7.1993 as assistant teacher in another school. She worked there for one academic year 1993-1994. During this time, Respondent No.2 appointed one T.S. Sutar who belonged to the open category against the vacancy. However, his appointment was not approved by the Education Officer since there was a backlog of reserved posts in the school. The services of Sutar were therefore terminated on 1.4.1994. Respondent No.2 then called for names of eligible backward class candidates from the Office of the District Social Welfare in order to fill up the backlog and several names of eligible candidates, including the petitioner were forwarded. The petitioner belongs to the Scheduled Caste and is qualified with B.Sc. and B.Ed. degrees. The petitioner was successful in the interview conducted by Respondent No.2 and was appointed on 30.6.1994. His appointment was approved on 16.3.1995 by the Education Officer. Since it was found that he

had satisfactorily completed the period of probation, his services were deemed to be confirmed in accordance with section 5(2) of the MEPS Act.

2. Thus, when Respondent No.1 filed an appeal before the School Tribunal under the MEPS Act on 27.11.1994, the petitioner was in service. The appeal was decided in favour of Respondent No.1 by the School Tribunal as a result of which the petitioner's services would have been terminated. The petitioner, therefore, challenged the order of the School Tribunal which was passed on 18.9.1997 by filing the present petition. The petitioner has pointed out in this petition that there was one post of assistant teacher for science in Respondent No.3 school and if the order of the School Tribunal was complied with by the school it would result in the petitioner's services being terminated.

3. When the petition was admitted, interim relief was granted in favour of the petitioner. Respondent Nos.2 and 3 were restrained from terminating the services of the petitioner during the pendency of the petition, without taking prior permission of this Court. While doing so, this Court directed that in the event there was a second post available for a science teacher in the school, Respondent Nos.2 and 3 were free to appoint Respondent No.1 in the school.

4. By consent of the petitioner and Respondent Nos.1, 2 and 3, the order passed at the interim stage will be treated as the final order in the petition. In the event it is found that the vacancy is available with the school, Respondent No.1 can be accommodated in that vacancy if found suitable.

5. It appears that Respondent No.1 is a physically challenged person. Respondent No.4 shall consider the case of Respondent No.1 compassionately and endeavour to accommodate her in some other school.

6. The Education Officer while considering the case of Respondent No.1 will note that Mr.Dighe on instructions from Respondent No.1 states that she has not and will not in future claim any wages for the period of unemployment.

7. The order of the School Tribunal is set aside. Rule made absolute accordingly. No costs.